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SENATE BILL NO. 1419

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance
on February 16, 2009)

(Patron Prior to Substitute—Senator Watkins)

A *BILL to amend and reenact § 58.1-3510 of the Code of Virginia, relating to taxation of merchants' capital.*

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-3510 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-3510. Definition of merchants' capital.

A. Merchants' capital is defined as follows: Inventory of stock on hand; daily rental vehicles as defined in § 58.1-2401; daily rental property as defined below; and all other taxable personal property of any kind whatsoever, except money on hand and on deposit and except tangible personal property not offered for sale as merchandise, which tangible personal property shall be reported and assessed as such.

For purposes of this section, a repair and service operation (i) carried on as an integral part of and in conjunction with a business that is primarily mercantile and (ii) the principal sales of such business are subject to the tax imposed by Chapter 24 (§ 58.1-2400 et seq.) of this title shall be deemed a mercantile business, and all capital, as defined herein, including all repair parts, materials and supplies associated with such repair and service operation shall be deemed merchants' capital.

B. For purposes of this section, "daily rental property" means all tangible personal property held for rental and owned by a person engaged in the short-term rental business, except trailers as defined in § 46.2-100 and other tangible personal property required to be licensed or registered with the Department of Motor Vehicles, Department of Game and Inland Fisheries, or the Department of Aviation.

C. A person is engaged in the short-term rental business if not less than ~~eighty~~80 percent of the gross rental receipts of such business in any year are from transactions involving rental periods of ~~ninety-two~~92 consecutive days or less, including all extensions and renewals to the same person or a person affiliated with the lessor. *Rental contracts under which the rental property may be returned by the renter or recalled by the owner at any time shall be deemed short-term rental contracts for periods of 92 consecutive days or less for purposes of this subsection, regardless of the time the equipment is ultimately out on rent.* "Affiliated" for purposes of this subsection shall mean any common ownership interest in excess of five percent of any officers or partners in common with the lessor and lessee. For purposes of this test, (i) any rental to a person affiliated with the lessor shall be treated as rental receipts but shall not qualify for purposes of the ~~eighty~~80 percent requirement, and (ii) any rental of personal property ~~which~~*that* also involves the provision of personal services for the operation of the personal property rented shall not be treated as gross receipts from rental. For purposes of this section, the delivery and installation of tangible personal property shall not mean operation.

D. Except for daily rental vehicles, rental property that is not daily rental property shall be classified pursuant to § 58.1-3503.

E. For purposes of valuing lottery tickets as part of a dealer's inventory, cost shall include only the compensation payable to a licensed sales agent as provided by rules or regulations adopted by the Board consistent with the provisions of subdivision 11 of subsection A of § 58.1-4007. The value of lottery tickets shall not be based on the cost of the tickets to the merchant.